

Retailers of motor vehicles are required to file Form ST-556, Sales Tax Transaction Reporting Return, for all motor vehicles the retailer sells, along with the proper amount of tax due, with the Department not later than 20 days after the day of delivery of the motor vehicle that is sold. See 35 ILCS 120/3. (This is a GIL.)

December 16, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated December 16, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On 22 July 1998 I purchased a 1995 Jeep Wrangler Sahara from the above mentioned car dealership for the price of \$15,598.00. At the time of purchase I told the salesman that I was in the United States Army stationed on BASE. I also informed the salesman that my home state of residency was still Illinois and that I had an Illinois State drivers license. I prepaid for Illinois tags (\$48), and an Illinois title(\$18) I have Illinois insurance and they provided me with 90 day Illinois Temporary License Tag. I was told that it would take about 6 weeks for my plates to come in. After about the 8th week, I had my mother call COMPANY and ask if my tags had come in or if I still had a waiting period. My mother was told that the COMPANY Business Dept. Was not going to release my Tag information to the state, my lean to the lean holder or the ST-556 Sales Tax Transaction Return form to the Illinois Dept. of Revenue until I paid the sales tax which was never charged at time of purchase, by fault of the salesman. The sales tax in Illinois as you know is .0675%. That would bring the sales tax to \$1,053 on a vehicle with the purchase price as mentioned above. COMPANY is telling me that in order for all my paperwork to be released, I had to provide them with a check for \$1,288. This amount is including a 20% penalty that COMPANY will be charged with, for not submitting the ST-556 to the Department of Revenue with in the 20 day after sale period. I have told COMPANY that I am not responsible for that penalty fee, and they still tell me that it is my fault that the paperwork was not submitted - because no sales tax was there to accompany the ST-556. I have told COMPANY repeatedly that I have no problem paying the sales tax of \$1,053 but I will not pay the penalty fee that I am not held accountable for. With all that said, my question for you PERSON is - am I responsible for the 20% penalty fee which would bring the amount to \$1,288 or am I only legally accountable for the initial sales tax of \$1,053? I would appreciated a response as to what I am legally responsible for as far as payment is concerned so I can finally be rid of this mess.

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after the day of delivery of the motor vehicle that is sold. See 35 ILCS 120/3. This requirement includes sales of vehicles that may be non-taxable, such as auction sales for resale and sales to out-of-State purchasers. In these cases, the retailer must document on the return and submit satisfactory evidence that the sale is not taxable. See 86 Ill. Adm. Code 130.540(e) and 130.605(a)(4)(A), enclosed. The dealer is liable for Retailers' Occupation Tax on his taxable gross receipts and the dealer collects the corresponding Use Tax from the purchaser.

Since the dealer is liable for his own tax liability under the Retailers' Occupation Tax, his failure to collect the Use Tax from his customer does not relieve the dealer from filing Form ST-556 by the due date. Even if the dealer in your case mistakenly thought that the transaction was exempt because you were taking the vehicle out of the State of Illinois, he still had the obligation to file Form ST-556 by the date it was due.

Section 3-3 of the Uniform Penalty and Interest Act imposes a penalty of 20% of the tax shown on the return for failure to pay before the due date. Interest may also accrue under Section 3-2 of that Act. As stated above, the dealer has a tax liability independent of his collection of Use Tax from his customers and it is his responsibility to file the transaction return in a timely manner.

Please note that you still have a Use Tax liability to pay. You may pay the tax directly to the Department of Revenue. Section 3 of the Retailers' Occupation Tax allows a user to pay the tax directly to the Department when the retailer is delaying payment. The dealer forfeits its discount when a customer pays the Department directly. When paying directly to the Department, you may be assessed penalty and interest because the payment is past due, however, you should write a letter to the Department detailing the dealer's delay and refusal to file the tax forms. In the letter you can ask for a reasonable cause determination to abate the penalty based upon this refusal. Once the tax is paid to the Department, we will give you a tax receipt that you can use to get a title for the vehicle.

This dealer's initial failure to timely file Form ST-556 and later blatant refusal to file Form ST-556 and your title information is troubling. I have referred this matter to our Audit Division.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.